IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1028

ELBERT M. D'AMICO,

Appellant,

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND (ROSZEL C. THOMSEN, Chief Judge)

APPELLEE'S MOTION TO DISMISS

Now comes The Baltimore and Ohio Railroad Company, Appellee, by its attorneys, Sydney R. Prince, Jr., and Thomas L. Samuel, and files its Motion to Dismiss the Appeal of Elbert M. D'Amico, pursuant to Supreme Court Rule 16.1(a), and for grounds in support thereof says:

1. This Appeal does not lie within the jurisdiction of this Honorable Court. The Appellant seeks to assert a direct Appeal from the Dismissal by the United States District Court for the District of Maryland, of an action brought under the Federal Employers' Liability Act, 45

U.S.C.A., §51, 35 Stat. 65, 1908, as amended, for want of prosecution. The right of direct appeal to this Court is prescribed by Statute, 28 U.S.C.A., §§1252-1253, 62 Stat. 928, 1948, as amended. No provision is made in such statutes for direct appeals from trial-court judgments in actions brought under the Federal Employers' Liability Act.

2. Even had Appellant filed his Appeal in the United States Court of Appeals for the Fourth Circuit, no appeal of right would lie to this Court, 28 U.S.C.A., §1254(1), 62 Stat. 928, 1948. Appellant's failure to pursue his right of appeal to the United States Court of Appeals for the Fourth Circuit militates against treating his "appeal" to this Court as a petition for a writ of certiorari.

Wherefore, Appellee prays this Honorable Court to dismiss this Appeal for want of jurisdiction.

Respectfully submitted,

SYDNEY R. PRINCE, JR.,
THOMAS L. SAMUEL,
Attorneys for Appellee.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the aforegoing Motion to Dismiss was mailed by first-class mail, postage prepaid, to Elbert M. D'Amico, Attorney pro se, 215 Constitution Avenue, N.E., Washington, D.C., this 3rd day of March, 1967.

THOMAS L. SAMUEL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

D'AMICO *v.* BALTIMORE & OHIO RAILROAD CO.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND.

No. 1028. Decided April 10, 1967.

PER CURIAM.

The motion to dispense with printing the jurisdictional statement is granted. The motion to dismiss is also granted and the appeal is dismissed for want of jurisdiction.